

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Petition of Qwest, BellSouth, and)	WC Docket No. 03-189
SBC For Expedited Forbearance From The)	
Commission's Current Pricing Rules For)	
The Unbundled Network Element Platform)	

OPPOSITION OF THE PACE COALITION

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Dated: September 22, 2003

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OPPOSITION OF THE PACE COALITION

The Promoting Active Competition Everywhere ("PACE") Coalition, through counsel, hereby files its Opposition in the above-captioned proceeding in response to the Public Notice released by the Federal Communications Commission (the "Commission") on August 18, 2003.¹

The PACE Coalition is composed of 18 competitive local exchange carriers ("CLECs") that provide a variety of telecommunications services to business and residential consumers throughout the country.² Each of the PACE Coalition companies offers a form of bundled local exchange and long distance services, among other services. In providing their services to residential and small business customers, PACE Coalition carriers utilize in various degrees the combination of unbundled network elements ("UNEs") commonly referred to as UNE-P. Because the relief requested in the self-styled forbearance petition³ of Qwest

¹ See DA 03-2679.

² PACE Coalition members include: ACCESS Integrated Networks, Inc.; ATX Communications, Inc.; Birch Telecom; BizOnline.com, Inc. d/b/a Veranet Solutions; BridgeCom; DataNet Systems; DSCI Corp.; Ernest Communications; IDS Telcom LLC; InfoHighway Communications; ITC^DeltaCom, Inc.; Granite Telecommunications; MCG Capital Corporation; MetTel; Microtech-Tel; Momentum Business Solutions Inc.; nii communications; Sage Telecom, Inc.; and Z-Tel Communications, Inc.

³ Although the BOCs have requested that the Commission exercise its forbearance authority under section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, the Petition for Expedited Forbearance filed in this proceeding does not comport with the specific filing requirements for such requests set forth in section 1.53 of the

Corporation, BellSouth Telecommunications, Inc., and SBC Communications Inc. (collectively, the “BOCs”) would have a material adverse affect on carriers that utilize UNE-P, PACE Coalition members have a strong interest in this proceeding.

In their Petition, the BOCs seek wholesale changes to the Commission’s pricing rules for UNE-P identical to those recently requested by the Verizon Telephone Companies, on the same legal basis as that set forth in Verizon’s Petition for Expedited Forbearance currently before the Commission.⁴ Specifically, the BOCs request that the Commission: (1) “forbear from applying its current TELRIC pricing rules to the UNE platform”; and (2) “immediately forbear from its decision permitting UNE-P carriers to collect per-minute access charges from long distance carriers.”⁵ The Commission should reject both requests.

As demonstrated by the Opposition of the PACE Coalition filed in the Verizon Proceeding, the BOCs’ request for relief from the TELRIC pricing rules for UNE-P is barred by section 10(d) of the Communications Act of 1934, as amended (the “Act”).⁶ Moreover and in any event, the BOCs’ Petition fails to satisfy the requirements for exercise of the Commission’s forbearance authority under the Act.⁷ To the contrary, the Commission’s grant of the BOCs’ Petition would: (1) result in discriminatory pricing for UNEs, and unjust and unreasonable pricing by the BOCs; (2) harm consumers; and (3) correspondingly harm the public interest. Accordingly, for the reasons set forth in the Opposition of the PACE Coalition filed in the

Commission’s rules, 47 C.F.R. § 1.53. Accordingly, the Commission is under no obligation to address the BOCs’ Petition within the time frames established in section 10 of the Act.

⁴ See Petition at 2 (citing *In the Matter of Petition for Expedited Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157 (the “Verizon Proceeding”)).

⁵ See Petition at 2.

⁶ See 47 U.S.C. § 160 (d).

⁷ See 47 U.S.C. § 160 (a).

Verizon Proceeding and incorporated herein by reference,⁸ the Commission should reject the BOCs' request that the Commission forbear from applying the current TELRIC pricing rules to UNE-P.⁹

In the Verizon Proceeding, the PACE Coalition also noted that the appropriate procedural vehicle for any modification by the Commission of its current TELRIC pricing methodology is a notice and comment rulemaking proceeding whereby the Commission may render its conclusions on the basis of a complete factual record.¹⁰ Importantly, since the filing date of the BOCs' Petition, the Commission has adopted a Notice of Proposed Rulemaking for the comprehensive review of its current TELRIC rules.¹¹ The PACE Coalition submits that issues regarding the future application of the TELRIC pricing rules to UNE-P, raised by BOCs' in their Petition, should be considered by the Commission in its rulemaking proceeding for that purpose, and not in the narrow context of the BOCs' request that the Commission forbear from applying specific TELRIC rules.

The Opposition of the PACE Coalition filed in the Verizon Proceeding further demonstrated that the BOCs' request that the Commission decline to permit UNE-P carriers to collect per-minute access charges from long distance carriers cannot be lawfully entertained by the Commission under section 10 of the Act. Indeed, because the requested relief would require that the Commission promulgate a new affirmative rule, such relief cannot be granted by the

⁸ Pursuant to the Public Notice released by the Commission in this proceeding, a party may incorporate by reference its comments in the Verizon Proceeding, WC Docket No. 03-157, in its filing in this docket. *See* DA 03-2679.

⁹ *See* Opposition of the PACE Coalition, *In the Matter of Petition for Expedited Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157, at 5-13 (filed Aug. 18, 2003).

¹⁰ *See id.*, at 14-15.

¹¹ *See Federal Communications Commission to Review Telephone Unbundled Network Element Pricing Rules*, WC Docket No. 03-173 (rel. Sept. 10, 2003).

Commission pursuant to its forbearance authority, which provides only that the Commission may forbear from applying its rules already in existence. Accordingly, for the reasons set forth in the Opposition of the PACE Coalition filed in the Verizon Proceeding and incorporated herein by reference,¹² the Commission should reject the BOCs' request that the Commission decline to permit UNE-P carriers to collect per-minute access charges from long distance carriers.¹³

WHEREFORE, consistent with the foregoing, and with the Opposition of the PACE Coalition in the Verizon Proceeding, incorporated herein by reference, the Commission should reject the BOCs' Petition for Expedited Forbearance, and should decline to exercise its forbearance authority under Section 10 of the Act as requested.

Respectfully submitted,



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¹² See *supra* n. 8.

¹³ See Opposition of the PACE Coalition, *In the Matter of Petition for Expedited Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157, at 3-5 (filed Aug. 18, 2003).